

**VOLUNTARY CLEANUP CONTRACT
09-5748-NRP**

**IN THE MATTER OF
SPRING MILLS/ CHENEY BROTHERS MULLINS PLANT, MARION COUNTY
and
MARION COUNTY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Marion County with respect to the Property located at 6424 E. Highway 76, Mullins, South Carolina. The Property includes approximately 49 acres identified as Tract A and Tract B of Marion County Tax Map Number 58-91. In entering this Contract, the Department relies on the representations of the "Information and Certification" dated November 16, 2009, by Marion County, which is incorporated into this Contract and attached as Appendix A, and on the Certification of Brixstone, LLC, which is incorporated into this Contract and attached as Appendix B.

AUTHORITY

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710 through 760, as amended; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. §§ 44-56-10, et seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710 through 760, as amended, and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10, et seq., the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10, et seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. §§ 44-2-10, et seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "Marion County" means the political entity of Marion County.
- B. "Beneficiaries of Marion County" means Marion County's Non-Responsible Party lenders, managers, members, employees, subsidiaries, and successors, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Beneficiaries of Brixstone, LLC" means Brixstone, LLC's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- D. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- E. "Contract" means this Voluntary Cleanup Contract.
- F. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- G. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- H. "Property" means the real property as described in the Information and Certification attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of Marion County. The Property is bounded generally by US Highway 76 to the south, Highway No. S-609 (Douglas Road) to the west and north with the City of Mullins Tank Site to

the north, and Marion County TM No. 55-86 comprised of agricultural fields to the east.

- I. "Receptor" means an individual that is presently or potentially exposed to contamination
- J. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause contamination upon release to the environment.
- K. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and operators on the Property are as follows:

Schneider Mills	Prior to 1971
Springs Industries, Inc.	1971 to 1984
Gerli & Co., Inc. (Cheney Brothers Plant)	1984 to 1992
Richmond Enterprises, LTD	1992 to 5/2006
Marion County Forfeited Land Commission	5/2006 to Present
OFab-SC, Inc. an affiliate of Amyotte, LLC	Lessee 2006 to 3/2008
Tripac, Inc.	Current Lessee
Aerial Options, LLC	Current Lessee

- B. Property and Surrounding Areas:

The Property is comprised of a 300,000-ft² structure, grassy field, asphalt parking lot, and a small wooded area. With the exception of the Marion County Forfeited Land Commission, all prior owners are believed to have used the Property for textile finishing and dyeing operations.

The eastern portion of the structure was formerly occupied by OFab-SC, Inc. (OFab), an affiliate of Amyotte, LLC. OFab operated a sheet metal fabrication business, which predominately involved the assembly of emergency vehicle bodies. OFab began operation on the Property in the summer of 2006 and ended their lease in March 2008. OFab placed cutting sands from their sheet metal fabrication operations into one of the concrete dyeing pits located in the west side of the building. The cutting sands consist primarily of sand (silica), garnet and aluminum and OFab did not consider the sand to be hazardous.

Aerial Options, LLC currently leases the eastern portion of the building to assemble components for fire trucks and other emergency vehicles.

Tripac, Inc. is a packing and distributing company that occupies a middle portion of the building. Tripac, Inc. uses the Property to repackage, store and ship flat screen TV's and blu-ray disc players.

C. Investigations / Reports:

This Property has been the subject of several environmental investigations including: A Phase I Environmental Site Assessment (ESA) conducted in August 2006; a limited Phase II ESA conducted in January 2007; a Phase I ESA conducted in April 2007' and a Limited Phase II ESA conducted in April 2007. A Phase I ESA, dated September 18, 2009, was submitted in support of this Contract.

The January 2007 Limited Phase II ESA reported the results of soil samples

and groundwater samples from temporary wells and focused on five areas of interest: the former underground storage tank (UST) system, the bulk diesel above ground storage tank (AST), the petroleum contamination migrating onto the Property from the City of Mullins Tank area to the north, the buried concrete wastewater discharge pipeline, and surface water and sediment from the wastewater pipeline collection sumps. Analysis of the samples from the UST system and the AST was limited to petroleum constituents while the analysis of the remaining areas of interest was for Resource Conservation and Recovery Act (RCRA) metals and volatile organic compounds (VOCs).

The analytical results were as follows:

- a. Former UST System, UST Permit #12697: No petroleum related contaminants were detected in soils. Low levels of fluoranthene (0.540 ppb) and xylenes (0.660 ppb) were detected in groundwater; however, neither exceeded their corresponding EPA Maximum Contaminant Level (MCL). This system was comprised of two USTs containing gasoline and diesel fuel that were removed from the ground in February 1990.
- b. Bulk Diesel AST: No petroleum related contaminants were detected in soils. Low levels of anthracene (0.190 ppb) and xylenes (0.800 ppb and 0.460 ppb) were detected in groundwater; however, neither exceeded their corresponding EPA Maximum Contaminant Level (MCL).
- c. Northern portion of Property: Groundwater sampling was conducted to evaluate the potential for contaminant migration onto the Property from the City of Mullins tank area (an off-site UST system, UST Permit #14714) release located hydraulically upgradient of the Property. Methyl tertiary butyl ether (MTBE) was detected above the MCL of 40 ppb at a concentration of 98.0 ppb. Petroleum related contaminants were not detected in soils.
- d. Concrete wastewater pipeline: The soil sampling detected the presence

of metals including arsenic, barium, cadmium, chromium, and lead. Only one sample was analyzed for volatile organic compounds (VOCs) and revealed concentrations of chloroform (3.53 ppb), cis-1,2-dichloroethene (3.19 ppb), and trichloroethene (2.78 ppb). Groundwater samples detected barium, cadmium, chromium, lead, and mercury. One groundwater sample was also analyzed for VOCs resulting in a detection of tetrachloroethene at a concentration of 1.73 ppb.

- e. Surface water and sediment sampling: Sediment samples from the wastewater pipeline detected several VOCs and metals; although, only arsenic exceeded the EPA Region 9 Preliminary Remediation Goal (PRG) for industrial use. The surface water samples collected from the wastewater basins detected metals; however, only lead exceeded the drinking water action level of 15 ppb. One surface water sample detected several VOCs including tetrachloroethene (3.24 ppb), acetone (1.85 ppb), cis-1, 2-dichloroethene (2.34 ppb), and trichloroethene (1.06 ppb).

The April 2007 Limited Groundwater Assessment Report included installation of five temporary wells via direct-push technology (DPT) constructed with a 1 inch diameter PVC casing and a slotted pre-packed screen. Two wells were installed in the area of the concrete dyeing pits, and three wells were installed along the concrete wastewater pipeline. Each well was advanced to approximately 18 feet below ground surface. Groundwater samples collected near the pits were analyzed for RCRA metals (filtered and unfiltered) and VOCs, while samples collected near the pipeline were analyzed only for the RCRA metals (filtered and unfiltered). The following is a summary of the analytical results:

- A. Samples near the pit detected barium and mercury in both filtered and unfiltered samples and chromium was detected in an unfiltered sample only. The detected metal concentrations did not exceed MCLs. Cis-1,2-dichloroethene, trichloroethene, tetrachloroethene,

and toluene were also detected with only tetrachloroethene (11 ppb) exceeding its MCL of 5 ppb.

B. Samples from the wastewater pipeline detected barium and mercury in both filtered and unfiltered samples and chromium was detected in the unfiltered sample only. The detected metal concentrations did not exceed MCLs.

D. Party Identification:

Marion County is a county government created pursuant to state law with its county administration office at 1305 North Main St., Marion, SC 29571. Marion County affirms that it has the financial resources to conduct the response action pursuant to this Contract.

E. Proposed Redevelopment:

Subsequent to Marion County's execution of this Contract, Brixstone, LLC, a subsidiary of Softee Supreme Diaper Corporation, will receive title to the Property as part of an economic development project benefitting the County. Brixstone will relocate their children's diaper manufacturing business to the Property. Brixstone expects to bring upward of 125 jobs immediately upon relocation. Brixstone also intends to expand their operations on the Property to a new full line of adult diapers. When expanded, the company expects to have from 250 to 400 employees. The current lessees will remain on the Property at this time.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. Marion County certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property. Brixstone, LLC certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. Marion County agrees to conduct the response actions specified in the subparagraphs below. An initial Work Plan shall be submitted by Marion County, or its designee, within thirty days of the execution date of this Contract, or later date if approved by the Department's project manager, setting forth methods and schedules for response actions detailed herein. Marion County acknowledges that the response actions may find distributions of existing contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. Marion County agrees to perform the additional response actions consistent with the intended uses of the Property under the purview of this Contract; however, Marion County may seek an amendment of this Contract to clarify its further responsibilities. Marion County shall perform all response actions, whether of Marion County's choosing or expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). Marion County shall identify and obtain the applicable permits before beginning any action.
- 2). The Work Plan and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards R.61-71. The Work

Plan shall provide sufficient detail to support issuance of the well approvals.

- c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics; or, 5) VOCs (EPA-TCL Volatile Organic Compounds).
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 4). The Work Plan shall include the names, addresses, and telephone numbers of Marion County's consulting firm(s), analytical laboratories, and Marion County's contact person for matters relating to this Contract.
- a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). Marion County shall notify the Department in writing of changes in the contractor or laboratory.
- 5). The Department will notify Marion County in writing of approvals or deficiencies in the Work Plan.
- 6). Marion County, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 7). Marion County shall implement the Work Plan upon written approval from the Department.
- 8). Marion County shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.

- 9). Marion County shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. Marion County shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Above Ground Storage Tank (AST)

- a). The AST must be emptied and properly closed. Should Marion County or any Beneficiary seek to utilize the AST, it shall prepare the AST for reuse. The integrity of the tank should be evaluated and secondary containment shall be constructed prior to reuse of this unit consistent with the U.S. EPA's Spill Prevention, Control and Countermeasures Plan.

C. Assess Waste Materials and Segregated Sources:

- 1). Marion County shall remove, characterize, and properly dispose of contaminated sediments and surface water from the wastewater collection sump located onsite adjacent to US Highway 76. Additionally, Marion County shall either remove or otherwise render the collection basin unusable.
- 2). Marion County shall assess any other Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.
- 3). Marion County's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
- 4). Marion County shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.

- 5). Marion County shall characterize the cutting sand deposited in the dye pit by compositing four samples into one sample for laboratory analysis for the TAL metals. The laboratory characterization shall be provided to the Department's EQC Regional office for a determination of the disposition of the cutting sand, including whether Marion County can use the sand as fill material. Marion County shall provide copies of the laboratory results and documentation of the cutting sand's ultimate disposition to the Department's project manager.
- 6). Marion County shall notify the Department if a release of contamination occurs as a result of its assessment, stabilization or removal actions. Marion County shall assess the impact of the release and take necessary action in accordance with a Department-approved plan.

D. Remove potential waste conduits

- 1). Marion County shall plug the drain hole in each dye pit with hydraulic cement prior to filling the pits and covering with cement.
- 2). Marion County shall plug the drain hole from the floor drain located in the center portion of the building, which should render the floor drain unusable.
- 3). Marion County shall either remove or other wise render the wastewater junction box collection basin at the dye pits and the wastewater collection sump adjacent to US Highway 76 unusable.
- 4). Marion County shall provide documentation to the Department's project manager that each drain has been plugged and shall document the origin of any fill material.

E. Assess soil quality across the Property:

- 1). Marion County shall collect and analyze three subsurface soil samples as follows:
 - a). One subsurface soil sample shall be collected adjacent to, and at a depth of 2 feet below the bottom of, the wastewater junction box (manhole

cover) at the west end of the building. This subsurface soil sample shall be analyzed for the full EPA-TAL and EPA-TCL.

- b). One subsurface soil sample shall be collected adjacent to the concrete wastewater discharge pipeline and shall be from a depth of 2 feet below the pipeline. The samples shall be spaced approximately equidistant between the wastewater junction box and the wastewater collection sump adjacent to Highway 76. This subsurface soil sample shall be analyzed for TAL-Metals, VOCs, and SVOCs.
 - c). One sample shall be collected adjacent to, and at a depth of 2 feet below, the bottom of the wastewater collection sump adjacent to Highway 76. This subsurface soil sample shall be analyzed for TAL-Metals, VOCs, and SVOCs.
- 2). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). Marion County shall install two permanent groundwater monitoring wells. These monitoring wells shall include one (1) shallow and one (1) deep groundwater monitoring well, both located hydraulically downgradient of the wastewater junction box. This well pair should be installed near the soil sampling location for this first pit. The well pair shall consist of a well screened to bracket the water table and a well screened directly above a competent confining layer and at a depth sufficient to capture potential releases from the discharge pipeline. Samples from these wells shall be analyzed for the full suite of EPA TAL/TCL parameters.
- 2). Marion County shall install two (2) additional wells at locations hydraulically downgradient of the concrete discharge pipeline as it traverses the Property away from the building. These wells may be installed using direct push technology (DPT) and may use pre-packed screens. One well should be located in the area where the discharge pipe leaves the Property. Samples from these wells shall be analyzed for TAL metals, TCL VOCs and SVOCs.

- 3). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

G. Evaluate and control potential impacts to indoor air:

- 1). Marion County shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction on the Property.
- 2). This evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the winter. Each sampling event shall include collection of indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a 10^{-6} risk. The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.
- 3). The Department may allow Marion County to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.

- 4). Marion County shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the measured indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

H. Institute reasonable contamination control measures:

- 1). Marion County shall take reasonable measures to limit or prevent human exposure to existing contamination on the Property:

- a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.

- i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
- ii. Marion County shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.

- b). Marion County shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.

- i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
- ii. Marion County shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

I. Monitor and/or abandon the monitoring wells:

- 1). Marion County shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors. The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 2). Marion County shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. Marion County shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. Marion County agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by Marion County.

PUBLIC PARTICIPATION

6. Marion County and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by Marion County.
 - B. Marion County shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.

- 1). The sign will state "Voluntary Cleanup Project by Marion County under Voluntary Cleanup Contract 09-5748-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of Marion County. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). Marion County shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). Marion County agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). Marion County shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, Marion County shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. Marion County shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within ninety (90) days of the execution date of this Contract and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;

- 2). Actions scheduled to be taken in the next reporting period;
- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. Marion County shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. Marion County shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. Brixstone, LLC has agreed to enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property to restrict the Property from residential use without additional assessment and any necessary remedial action, and to enter and record a Covenant if groundwater contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:

A. The Department shall prepare and sign the Covenant prior to providing it to Brixstone, LLC. An authorized representative of Brixstone, LLC shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

- B. Brixstone, LLC or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for Marion County where the Property is located.
- C. Brixstone, LLC or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
- D. Brixstone, LLC or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- E. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change; however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.
- F. Marion County acknowledges and agrees that if Brixstone, LLC fails to comply with the requirements of this Paragraph, a certificate of completion and a covenant not to sue will not be issued and the Contract may be terminated.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person,

whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

- A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Jo Cherie Overcash
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

- B. Marion County's designated contact person as of the effective date of this contract shall be:

Charles L. "Chuck" McLain, III, Esq.
Marion County Attorney
McLain & Lee, LLC
2141-D Hoffmeyer Road
Post Office Box 7489
Florence, SC 29501 (PO: 29502)
843-661-7373

- C. Brixstone, LLC's designated contact person as of the effective date of this contract shall be:

Robert A. Williams
P.O. Box 1367

7142 Woodrow Street
Irmo, SC 29063
(803) 796-9296

FINANCIAL REIMBURSEMENT

11. Marion County or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to Marion County on a quarterly basis. In recognition of Marion County's non-profit status, the Department may waive reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to Marion County; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty days of the Department's invoice submitted to:

Charles L. "Chuck" McLain, III, Esq.
Marion County Attorney
McLain & Lee, LLC
2141-D Hoffmeyer Road
Post Office Box 7489
Florence, SC 29501 (PO: 29502)
843-661-7373

ACCESS TO THE PROPERTY

12. Brixstone, LLC has agreed that the Department has an irrevocable right of access to the Property after Brixstone, LLC acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized

representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

- A. Marion County shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. The Department will issue the Certificate of Completion with its covenant not to sue Marion County and Marion County's Beneficiaries, and Brixstone, LLC and Brixstone LLC's Beneficiaries as owner(s) of the Property, upon determining that both Marion County and Brixstone, LLC have successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will require compliance with specific performance standards.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if the requirements of the Contract are not satisfactorily met.

ECONOMIC BENEFITS REPORTING

14. Brixstone, LLC or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the

State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. Brixstone, LLC shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

SUCCESSOR AND BENEFICIARIES

15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, Marion County, and Brixstone, LLC and Beneficiaries as set forth herein. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

A. Marion County or Brixstone, LLC shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.

B. If the Certificate of Completion has not been issued, Marion County, Brixstone, LLC, or their Beneficiaries shall seek approval from the Department prior to transfer of the Property. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of a signed statement from the new individual or entity showing it:

- 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
- 2). Has sufficient resources to complete the activities of this Contract;
- 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
- 4). Will assume the protections and all obligations of this Contract and the Department's finding in its sole discretion that there is a measurable benefit to the State and the community as a result of this transfer.

C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, Marion County, Brixstone, LLC, or their Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

D. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. Marion County, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may terminate this Contract only for cause and shall provide opportunity for Marion County, Brixstone, LLC or their Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:
- 1). Failure to complete the terms of this Contract;
 - 2). Change in business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;

- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure to implement appropriate response actions for additional contamination or releases caused by Marion County, Brixstone, LLC or their Beneficiaries;
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of Marion County's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should Marion County or its Beneficiaries fail to correct, the Department may allow Brixstone, LLC or its Beneficiaries to undertake actions to correct the cause for termination.

C. Should Marion County or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by Marion County, Brixstone, LLC or their Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.

D. Termination of this Contract by any party does not end the obligations of Marion County or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall become immediately due.

- E. The protections provided to Marion County, Brixstone, LLC or their Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. Marion County, Brixstone, LLC and their Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from CERCLA contribution claims.
- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). As to Marion County, eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code Ann. § 12-6-3550.

- B. Effective on the date the Certificate of Completion is issued by the Department:

- 1). The Department's covenant not to sue Marion County, Brixstone, LLC and Beneficiaries for Existing Contamination except for releases and consequences caused by Marion County, Brixstone, LLC or Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.

- C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by Marion County, Brixstone, LLC and Beneficiaries. The Department retains all rights under State and Federal laws to compel Marion County, Brixstone, LLC and Beneficiaries to perform or pay for response activity

for contamination, releases and consequences created by Marion County, Brixstone, LLC or Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than Marion County, Brixstone, LLC, and their Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than Marion County, Brixstone, LLC and their Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY MARION COUNTY AND BRIXSTONE, LLC

19. Marion County and Brixstone, LLC retain all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. Marion County, Brixstone, LLC and their Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, Marion County, Brixstone, LLC and their Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. Marion County, Brixstone, LLC and their Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to Marion County, Brixstone, LLC or their Beneficiaries. Marion County, Brixstone, LLC and their Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly

discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY MARION COUNTY, BRIXSTONE, LLC AND THEIR BENEFICIARIES

21. In consideration of the protections from the Department, Marion County, Brixstone, LLC, and their Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

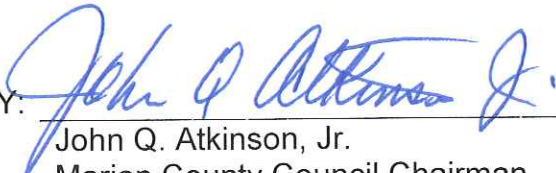
BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste
Management

DATE: _____


Approved by Office of General Counsel


DATE: 12/23/2009

MARION COUNTY

BY: 
John Q. Atkinson, Jr.
Marion County Council Chairman

DATE: 12/21/09

ACKNOWLEDGED BY BRIXSTONE, LLC:

BY: 
Robert A. Williams
Member

DATE: 12/18/2009

APPENDIX A

COUNCIL MEMBERS

Elista H. Smith
Vice Chairwoman
John Q. Atkinson, Jr.
Chairman

Pearly E. Britt
Allen W. Floyd
Eloise W. Rogers
Thomas Shaw
Milton W. Troy, II

Office Of

Marion County Council

1305 North Main Street
P.O. Box 183
(843) 423-3904 • Fax: (843) 423-8306
Marion, South Carolina 29571



G. Timothy Harper
Administrator
Kent M. Williams
Deputy Administrator
Sabrina Davis
Clerk To Council
Charles L. McLain, III
County Attorney

November 16, 2009

Mr. Robert F. Hodges, Jr.
S.C. Dep't of Health & Envtl. Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Re: VCC for Marion County

Dear Mr. Hodges:

I am writing to you today in my capacity as the Marion County Attorney to certify that Marion County qualifies as a Non-Responsible Party ("NRP") with regards to certain environmental concerns on property in which it holds an interest at 6424 East Highway 76, Mullins, SC ("Property"). Marion County seeks to enter into a Voluntary Cleanup Contract ("Contract") with DHEC. In 2006, the Marion County Forfeited Land Commission received title to the Property when the County sold the Property for delinquent taxes. Since then the property has been leased.

The County has identified a prospective purchaser for the Property. As part of its economic development and for the benefit of the citizens of Marion County, an agreement with the prospective purchaser has been reached which includes Marion County's work under a Contract to remediate the Property through which the prospective purchaser will be entitled to the status of a "beneficiary" under that Contract. Marion County has a strong interest in seeing the Property redeveloped in a manner that will improve the tax base and present employment opportunities for its citizens, and further believes this project to be in the best interests of Marion County.

The prospective purchaser is Brixstone, LLC, a South Carolina limited liability company ("Brixstone"). Brixstone wishes to acquire the Property to relocate and expand their diaper manufacturing business currently located in Georgia. Brixstone is a subsidiary company of the parent Georgia company, Softee Supreme Diaper Corporation, located at 5235 Snapfinger

Woods Drive, Decatur, GA 30035. Their President's name is Colin Brown, III, and his office number is 770-359-2020.

Brixstone is promising to immediately bring 100 to 125 jobs to Marion County when it relocates its existing operation to the Property. Additionally, they plan to expand their existing operation of manufacturing children's diapers to a new full line of adult diapers and with this expansion they promise employ 250 to 400 employees. Currently Marion County has a 26.4% unemployment rate, which ranks as number one in the State for unemployment. The Commerce Department has been very instrumental in seeing to it that this transaction is completed with the relocation of Brixstone to Marion County. In order for this transaction to conclude, Marion County must receive NRP status for the Property, because the County cannot indemnify the purchaser against any environmental concerns that currently exist on the Property.

Marion County is a political subdivision of the State of South Carolina. Marion County certifies to DHEC that:

- (a) it is not a responsible party at the site;
- (b) it is not a parent, successor, or subsidiary of a responsible party at the site;
- (c) its activities will not aggravate or contribute to existing contamination on the site or pose significant human health or environmental risks; and
- (d) it is financially viable to meet the obligations under the contract.

Therefore, Marion County meets all of the requirements of a Non-Responsible Party and is entitled to enter into a Voluntary Cleanup Contract for the Property. Marion County will perform the remediation tasks under the Contract and receive a certification of completion. Brixstone will acquire title to the Property and be a beneficiary of the Contract.

Further, to the best of my knowledge, Brixstone has never owned an interest in the Property, is not in any way connected to Marion County or to any prior owner of the Property, and its existence and operations at the Property will not contribute to any contamination nor pose any health risk to the community.

I understand that the Department has previously received Phase I and Phase II environmental site assessments and has discussed the Contract and any environmental remediation for the Property with Marion County's environmental consultant in this matter, Heyward Key of S&ME.

I will serve as the point of contact on behalf of Marion County for this Contract. If you have any questions concerning this certification or the Contract, or if you need any further information, please feel free to contact me by phone at my Florence office at 843-661-7373 or on my cell phone at 843-615-2829. Additionally, please mail any additional documentation necessary to my Florence office at 2141-D Hoffmeyer Road, Florence, SC 29501.

CLM

November 16, 2009
Page 3

Thank you for your time and consideration. I appreciate your diligence in working with the County to bring this important economic development to Marion County.

With kind regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to be 'Chuck McLain', written over a horizontal line.

Charles L. "Chuck" McLain, III

cc: Tim Harper, County Administrator
John Q. Atkinson, Jr., Chairman
Randolph R. Lowell, Esquire

CLM

LINE	LENGTH	BEARING
L1	35.14	N15°40'24"E
L2	49.95	S74°03'45"E
L3	15.06	N15°54'44"E
L4	81.96	N64°33'32"W

IPS = IRON PIN SET (45 REBAR)

TM# 47-75
ROBERT E. MOLTEN JR., ETAL

TM# 47-78
BATTLE BROTHERS

TRACT A
1,321,969 sq. ft.
30.35 acres
(IMPROVEMENTS NOT SHOWN)

TRACT B
820,282 sq. ft.
18.83 acres

TM# 55-86
CHARLES H. JORDAN

LOCATION MAP



RECEIVED
OCT 01 2009
SITE INVESTIGATION
RECOMMENDATION

PLAT

OF 2 TRACTS LOCATED NEAR MULLINS, MARION COUNTY, SOUTH CAROLINA,
BEING A DIVISION OF THAT PROPERTY DESIGNATED AS TAX PARCEL 58-91
AND SHOWN ON A PLAT FOR SPRINGS INDUSTRIAL INC. BY SMITH SURVEY
CO., DATED SEPT. 1983, RECORDED IN PLAT BOOK 30, PG. 20.

MARION COUNTY

DATE: AUG. 28, 2009
JOB NO: 09478
FID BK: 264
PAGE: 69
REF: JOB#
TAX MAP #: 58-91
SCALE 1" = 200 FT
GRAPHIC SCALE

CERTIFICATE OF AUTHORIZATION
CAROLINA
NESBITT
SURVEYING
CO., INC.
No. C01197

NESBITT SURVEYING CO., INC.
4340 ALLIGATOR ROAD
U.S. HIGHWAY 76 & ALLIGATOR ROAD
TIMMONSVILLE, S.C. 29161
PHONE (843) 346-3302
FAX (843) 346-5502
email: davidn@nesbittsurveying.com

DAVID A. NESBITT, RLS NO 7823

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN. ALSO, THERE ARE NO ENCUMBRANCES, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY LINES SHOWN HEREON. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE MARION COUNTY ENGINEERING DEPARTMENT AND HAS FOUND THE SUBJECT PROPERTY NOT TO BE IN A FLOOD ZONE. UNLESS NOTED HEREON, THIS MAP DOES NOT ADDRESS ENVIRONMENTAL CONCERNS OR SUBSURFACE INVESTIGATION.

APPENDIX B

CERTIFICATION
IN THE MATTER OF
SPRING MILLS/ CHENEY BROTHERS MULLINS PLANT, MARION COUNTY
and
BRIXSTONE, LLC

This CERTIFICATION is made by Brixstone, LLC (Brixstone) with respect to the Property located at 6424 E. Highway 76, Mullins, South Carolina. The Property includes approximately 49 acres identified as Tract A and Tract B of Marion County Tax Map Number 58-91. It is intended that the Property will be subject to Non-Responsible Party Voluntary Cleanup Contract 09-5748-NRP between the South Carolina Department of Health and Environmental Control (Department) and Marion County (the VCC) and that Brixstone will take title to the property.

On behalf of Brixstone, I, Robert A. Williams, in my capacity as a member authorized to execute this certification, by my signature below certify the following:

- Brixstone, is not a responsible party at the Site;
- Brixstone is not a parent, successor, or subsidiary of a responsible party at the Site;
- Brixstone is eligible to be a Bona Fide Prospective Purchaser for the Property;
- Brixstone will not undertake activities that will aggravate or contribute to existing contamination on the Property or pose significant human health or environmental risks;
- Brixstone will, in accordance with the VCC Paragraph 9, enter and record a Declaration of Covenants and Restrictions for the Property; and,
- Brixstone will comply with the continuing obligations of VCC Paragraphs 7, 10, 12, 14, 15 and 20. These obligations commence when Brixstone takes title to the Property.

It is acknowledged that the SCDHEC relies upon this certification in entering the NRP VCC 09-5748-NRP, which will be incorporated into the VCC and attached as Appendix B.

BRIXSTONE, LLC



By: Robert A. Williams
Member